



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

COPY MAILED

MAR 24 2008

OFFICE OF PETITIONS

OLIFF & BERRIDGE, PLC.
P.O. BOX 320850
ALEXANDRIA VA 22320-4850

In re Application of :
Kuruoglu, et al. : DECISION ON PETITION
Application No. 09/982,024 :
Filed: October 19, 2001 :
Atty. Dkt. No.: 110915 :

This is a decision on the petition to withdraw the holding of abandonment, filed December 7, 2007, under 37 CFR 1.181.

The petition is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

The instant application became abandoned for failure to timely file a proper appeal brief in response to the Notice of Appeal filed April 12, 2007. An appeal brief was filed May 4, 2007. A Notice of Non-Compliant Appeal Brief was mailed June 29, 2007. An amended appeal brief was filed July 11, 2007. A Notice of Non-Compliant Appeal Brief was mailed October 18, 2007. A Notice dismissing the appeal and holding the application abandoned was mailed November 28, 2007.

Petitioners argue that the Office prematurely dismissed applicants' appeal and held the application abandoned. Applicants' further argue that a reply to the Notice of Non-Compliant Amendment mailed October 18, 2007 was due on or before November 18, 2007. Petitioners also point out that the Notice of Non-Compliant Amendment indicated that the time period for reply was extendible up to five months in accordance with 37 CFR 1.136.

Petitioners' arguments have been carefully considered, but are not convincing. In accordance with 37 CFR 41.37(d), "[i]f a brief is filed which does not comply with all the requirements

of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed."

Thus, the time period for submission of an amended appeal brief may only extend up to five months after the two month time period for submission of the appeal brief following the Notice of Appeal.

Herein, the Notice of Appeal was submitted April 12, 2007. The appeal brief was due on or before June 12, 2007. The maximum time period for submission of a compliant appeal brief expired five months after the date that the Notice of Appeal was filed, or, November 12, 2007.

As no amended appeal brief in compliance with 37 CFR 41.37 was submitted within seven months of the Notice of Appeal, the maximum period of time allowed for submission of a compliant appeal brief, the appeal stands dismissed and the holding of abandonment cannot be withdrawn.

ALTERNATE VENUE

Petitioners may wish to consider filing a petition stating that the delay was unintentional. Petitioners' attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'A. Brown', is written over the printed name.

Alesia M. Brown
Petitions Attorney
Office of Petitions